the title of the original grantor which he was entitled to have removed.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 514.]

5. Reformation of Instruments (§ 32*)—Failure to Assert Incorrectness of Deed for 17 Years a Waiver.—Where a grantee accepted a deed reserving mineral rights as a full performance of the contract to convey and made no claim for 17 years, that the reservation should not have been included, he must be held to have waived his rights.

Sims, Jr., dissenting.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 883-884.]

Appeal from Circuit Court, Buchanan County.

Suit by Green Charles against George W. McClanahan and others, with cross-bill by defendant named. From the decree plaintiff appeals. Reversed and rendered.

W. A. Daugherty, of Grundy, for appellant.

Williams & Combs, of Grundy, for appellees.

DUTY et al. *v.* HONAKER LUMBER CO. et al.

Sept. 22, 1921.

[108 S. E. 863.]

1. Boundaries (§ 26*)—Except When Relief Authorized by Statute or Some Peculiar Equity Is Sought, Equity Courts Cannot Settle Title and Boundaries.—Except when the relief authorized by the Code 1919, § 6248, is sought, or there is some peculiar equity, courts of equity are without jurisdiction to settle disputes regarding titles and boundaries.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 610.]

2. Equity (§ 365*)—Petition and Cross-Bills on Matter Where Law Remedy Was Adequate Should Have Been Dismissed without Prejudice.—The petitions and cross-bills of those who were not parties defendant to an original bill in equity, claiming title and asserting boundaries, and who had adequate remedy by ejectment, should have been dismissed without prejudice, since they could not be jeopardized by a decree to which they were not parties.

[Ed. Note. For other cases, see 1 Va.-W. Va. Enc. Dig. 165.]

3. Equity (§ 348*)—Relief Denied Where Essential Allegations Cannot Be Proved with Reasonable Certainty because of Deaths.—Where if the allegations of the original bill had been proved, the relief prayed would have been afforded but all of the parties to the original transactions are dead and there is no written evidence of value and any conclusion would be conjectural and founded upon a random guess,

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

relief must be denied, since essential allegations must be proved with reasonable certainty.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 129.]

Appeal from Circuit Court, Dickenson County.

Bill by J. Harmon Duty and others against the Honaker Lumber Company and others. Bill, cross-bill, demurrer, exceptions, motions to strike out, and objections to pleadings dismissed, and decree entered dismissing the cause, and complainants appeal. Affirmed.

Chase & McCoy, of Clintwood, for appellants.

Greever, Gillespie & Divine, of Tazewell, *Sutherland & Sutherland,* of Clintwood, *Bird & Lively,* of Lebanon, and *A. A. Skeen,* of Clintwood, for appellees.

YOUNG et al. *v.* BOWEN et al.

Sept. 22, 1921.

[108 S. E. 866.]

1. Appeal and Error (§ 1022 (1)*)—Findings of Master Sustained by Trial Court Not Disturbed.—Findings of master on evidence taken before him concerning items in a suit to surcharge and falsify an ex parte account of an administrator, which are sustained by the trial court, will not as a rule be disturbed on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 610.]

2. Executors and Administrators (§ 516 (6)*)—Evidence Held Insufficient to Sustain Charge against Administrator.—In an action to surcharge and falsify an ex parte account of an administrator, evidence held insufficient to sustain a charge against the administrator made by the master.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 676.]

3. Executors and Administrators (§ 513 (2)*)—Ex parte Settlements of Commissioner of Accounts Presumed Correct.—In a suit to surcharge and falsify an ex parte account of an administrator, ex parte settlements of the commissioner of accounts are presumed to be correct until surcharged and falsified (Code 1919, § 5429), and not only the duty of specifying errors, but also the onus probandi, devolves on the party complaining.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 676.]

4. Executors and Administrators (§ 132*)—Administrator Had No Authority to Construct Storehouse.—An administrator has no authority to use funds of the estate to erect a storehouse upon land of the estate, and where he constructs such a building and it is burned, he is

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.